

Claw 122

Mid Term

Module 1

Chapter 1

Risk Management and Sources of Law

Four Basic Strategies for Risk Management

1. Risk Avoidance: A risk that is so serious it should be avoided all together.
2. Risk Reduction: Risks can be reduced to an acceptable level through precautions.
3. Risk Shifting: Even if a risk cannot be avoided or reduced, it may be shifted on to another party.
4. Risk Acceptance: Accepting the risk.

Risk Management Strategies Businesses

1. Insurance: type of contract one party pays price to another party.
2. Exclusion clauses: written into a contract. Clause attempts to exclude all risk of liability or some from certain losses.
3. Incorporation: businesses set up as corporations or companies so the owners and shareholders are not personally liable for the business.

Public Law Vs Private Law

Public Law: concerned with governments and the ways in which we deal with citizens

1. Constitutional law: Basic laws of our political and legal systems.
2. Administrative Law: concerned with the creation and operation of administration agencies, boards, commissions and tribunals.
3. Criminal law: deals with offences against the state.
4. Tax law: is concerned with the rules that are used to collect money for public spending.

Private Law: the rules that apply in private manners.

1. Tort: a private wrong against a particular person.
 - a. Intentional Tort: Assault and False imprisonment
 - b. Business tort: deceit and conspiracy
 - c. Negligence: covers most situations when someone carelessly hurts another person
2. Law of Contracts: concerned with the creation and enforcement of agreements.
3. Law of Property: concerned with the acquisition, use, and dispersion of property.

Canadian Charter of Rights and Freedoms



Government
of Canada

Gouvernement
du Canada

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

FUNDAMENTAL FREEDOMS



The Charter protects the freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association.

DEMOCRATIC RIGHTS



The Charter protects rights that enable you to participate in the democratic process and have your voice heard in Parliament.

MOBILITY RIGHTS



All Canadians have the right to enter, stay in and leave Canada. The Charter also guarantees that you can look for work or set up a business anywhere in Canada.

LEGAL RIGHTS



The Charter provides a broad set of legal rights that protect us in our dealings with the justice system. It ensures that everyone is treated fairly during legal proceedings.

EQUALITY RIGHTS



Everyone has the right not to be discriminated against by the government based on personal characteristics like race, national or ethnic origin, colour, religion, sex, age, disability or sexual orientation.

OFFICIAL LANGUAGE RIGHTS



English and French both have equal status, rights and privileges as to their use in all institutions of the Parliament and government of Canada.

MINORITY LANGUAGE EDUCATION RIGHTS



The Charter requires that provincial governments provide education to its citizens in the minority official language of the province where numbers warrant.

Civil Law and Common Law

Civil Law

- Traces their history to ancient rome
- Quebec borrow its law from quebec

Common Law

- **Systems**
 - Refers to legal system borrowed from england
- **Sources**
 - Can refer to the rules created by judges. Most of the rules in contract law are common law created by the courts.

Equity

Equity: In a general sense it means fairness

Nature of Equity: The concept of equity no longer allows judges to decide cases on the basis of fairness

One set of courts: now courts are both a court of law and equity

Chapter 2 **Litigation and Alternative Dispute Resolution**

Class Action: Allows a single person, or a small group of people to sue on behalf of a larger group of claimants.

Litigation: Litigation is the system of resolving disputes in court.

Pleadings:

The documents used to identify issues and clarify the nature of a dispute

Examples;

1. Statement of Claim: is a document in which the plaintiff outlines the nature of the complaint.
2. Statement of Defence: Defendant sets out its version of the facts and indicates how it intends to deny the claim
3. Counterclaim: claim the defendant makes against the plaintiff.
4. Reply: document in which a party responds to the statement of defence.
5. Demand for Particulars: requires other side to provide additional information.

Costs

Expenses that a party incurred during litigation. Awarded to the winning side.

Contingency for Agreements:

- Requires a client to pay its lawyer only if the lawsuit is successful.

Different types of Trial Courts and Appeal Courts:

Trial Courts:

- Federal Court:
 - Hear trials concerning issues that the constitution assigns to the federal government, such as copyrights, bills of exchange and telecommunications
- Provincial Courts:
 - Family matters
 - Youth matters
 - Most criminal cases
- Superior Court:
 - Hears more serious trials.

Court of Appeal:

- Members appointed by federal government
 - Hears appeals

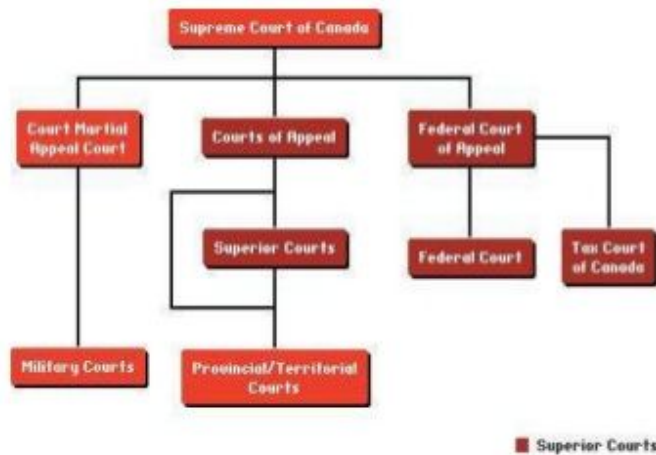
Small Claims Court:

- Type of court that deals with disputes, involving limited amounts of money.

Court Hierarchy

- Courts are arranged in a hierarchy according to their importance

**Canadian Court structure
Outline of Canada's Court System**



Doctrine of Precedent: Requires a court to follow any other court that is above it in the same hierarchy

The Rule of Law: States that disputes should be settled on the basis of law rather than personal opinions.

Alternative Dispute Resolution

- Is any process that allows the parties to resolve their dispute without going to court.
- Three major types:
 1. Negotiation
 - a. Less like law, more like business.
 - b. Parties remain on good terms
 2. Mediation: neutral party helps the parties reach an agreement.
 - a. Involves outsider
 - b. Non binding
 - c. Mediator does not give decision
 3. Arbitration: neutral third party called an arbitrator, imposes a decision on the parties
 - a. Parties do not control outcome
 - b. Usually required to obey someone else's decision

Module 2

Chapter 3

Tort Law Fundamentals

Tort Law

- Defined as a failure to fulfill a private obligation imposed by the law

Tortfeasor: someone who committed tort

Social purpose of Tort Law:

- Discourages people from committing private wrongs by requiring them to compensate and restore the wronged party

Types of Torts:

1. Intentional Torts:
 - a. Require some degree of intention
 - b. Eg: Assault, Battery, False Imprisonment.
2. Negligence Torts:
 - a. Involve harm that is caused carelessly.
 - b. Nuisance, negligence, product liability
3. Strict Liability Torts:
 - a. Very risky activities and injuries caused by wildlife or pets

Intentional tort of Trespass of Land

- Intentional interference with land
- Activity has to be intentional
- Has to relate to land
- Has to be improper
 - A, lack of consent
 - B, lack of legal authority

Vicarious Liability

- Being liable for torts caused by someone else
- Common business risk
- Important effects of vicarious liability
 - Victim can sue the employee and employer
 - Employee is generally liable to the employer
 - Employer typically won't enforce on employee because that would have a negative effect on work morale
- Cannot be implied to independent contractors.

Module 3

Chapter 3

Business Torts

Tort of Deceit

Deceit: intentionally misleading statement

Legal test for deceit:

1. Defendant made a false statement
2. Defendant knew the statement was false
3. That the defendant intended to mislead the plaintiffs
4. Plaintiff suffered a loss as a result of reasonably relying upon the statement

Tort of Defamation

Defamation: occurs when a defendant makes a false statement that could lead to a reasonable person to have a lower opinion of the plaintiff

Legal Test for Defamation:

1. Statement reasonably refers to the plaintiff
2. The statement could hurt the plaintiffs reputation
3. Statement was published to a third party
4. Statement was not true

3 Defences to Defamation:

- a. Justification: defence that the statement is true.
 - b. Privilege: encourage free speech and divided into two separate defences.
 - i. Absolute privilege and Qualified Privilege
 - c. Fair Comment: encourages useful debate on significant issues
- Absolute Privilege: offers complete immunity, only available in;
 - During parliamentary proceedings
 - Between high government officials
 - By a judge, lawyer, litigant or witness
 - Between spouses
 - Qualified privilege:

- Applies against defamation claims where there is a legal, moral, or social obligation to make a statement to someone with a seminar duty or interest in receiving it.
- Fair comment: expression of an opinion on a matter of public importance:
 - Opinion must be informed; and
 - Opinion must relate to issues of public interest

Type of Interference With Contractual

- Distribution of contract that is in force between the plaintiff and another party. Two types; Direct Inducement and Indirect Inducement.
- Direct inducement Legal Test:
 - Defendant knows about the contract
 - Defendant intends to cause the 3rd party to breach
 - Defendant must cause the 3rd party to breach
 - Plaintiff suffers a loss
- Indirect Inducement Legal Test:
 - Defendant knows about the contract
 - Defendant intends to cause the 3rd party to breach
 - Defendant must cause the 3rd party to breach
 - Plaintiff suffers a loss

Torts Involving Land

Tort of Trespass to Property:

- Occurs when someone intentionally interferes with someone else's land.

Tort of Nuisance

Nuisance: Occurs where the defendant's use of its land unreasonably interferes with the plaintiff's reasonable use and enjoyment of the plaintiff's own land.

Legal Test:

- Interference caused by the defendant must be unreasonable
 - Unreasonable if factors
 - Type of interference
 - Nature and neighbourhood
 - Time and day of interference
 - Intensity and duration
 - Social utility of interference

Defence to Nuisance:

- a. Consent to activity
- b. Statutory authority (being authorized by law)

Remedies to nuisance:

- Damages for loss of value to property
- Injunction (stopping the interference)

Tort of Occupier Liability

Occurs when the occupiers of a premise is held liable for injuries that someone sustains on these premises.

In Ontario:

- Occupier is anyone having possession of or control over premises or activities on premises.
Premises broadly defined to include land, buildings, other structures, water.

Defences to Intentional Torts

Full Defence:

- Protects defendant from all liability

- Ex: consent, self defence, defence of property
- Types of Full Defence:
 - Self Defence:
 - Torts of assault and battery
 - Person must be at immediate risk
 - No use of more force than necessary
 - Parent can defend child
 - Consent:
 - Plaintiff consented to the interference with his/her body, property, or land
 - Must be voluntary, and informed
 - Can be withdrawn or limited
 - Implied consent in limited cases
 - Defence of Necessity:
 - Defendant actions are justified by an emergency
 - Situation where immediate action is required
 - Benefits from conduct will outweigh the harm

Partial Defence:

- Allow the court to reduce damages on the basis of plaintiff.
- Ex. provocation, contributory negligence.
- Partial Defence Types:
 - Provocation:
 - Words or actions that would cause a reasonable person to lose control
 - Contributory Negligence
 - The plaintiff is partially responsible for the injury that the defendant caused to the plaintiff

Module 4

Introduction to Negligence

Negligence: can generally be defined as the careless causing of harm

Purpose: compensate for harmful, risky actions conducted carelessly, but at the same time, allow for careful risk taking.

Elements of Negligence

1. Duty of care:
 - Should the defendant have been careful towards the plaintiff?
2. Standard of Care:
 - How careful should the defendant have been?
3. Causation:
 - Is there a connection between what the defendant has done and the injury sustained by the plaintiff.

Duty of Care

- Two criteria present:
 - Reasonable foreseeability
 - Proximity
 - Might not enforce due to public policy considerations
- Reasonable foreseeability:
 - Is an objective test
 - “Would a reasonable person have foreseen the risk that this hard would occur”
 - Not subjectable to subjectivity
- Proximity:

- Must be a close and direct connection between the plaintiff and the defendant.
- Proximity different criteria:
 - Physical connection:
 - Being hit by a baseball bat that was swung.
 - social connection:
 - Bond between a caregiver and a child
 - Commercial connection:
 - Parties do a business transaction
 - Bar where a drunk driver was drinking
 - Through reliance:
 - Reasonable use of financial advice
- Public Policy:
 - Legal, social and political concerns in rendering a decision
 - Effects recognizing a duty of care would have on society and the legal system

Companies may use disclaimers to manage risk for duty of care

Standard of Care

- How much care a person with a duty of care must exercise
- Focuses on the defendant's actions and omissions
- Only can be liable for negligence if the standard of care is breached.

Legal test for standard of care:

- Reasonable person test:
 - "What would a reasonable person in the position of the defendant have done?"
 - Considered Variables:
 - Severity of harm
 - Likelihood the harm will occur
 - Cost of avoiding the harm
 - Social utility of applicable activity

- Possibility of any sudden

Standard of Care for Professionals:

- Higher than a reasonable person
 - No allowance for inexperience
 - No allowance for exaggerated credentials
 - May be higher for specialist or expert professional
- Exceptions:
 - Errors of judgement are different than carelessness
 - Compliance with an approved or statutory standard will not be careless.

Standard of care for Products:

- Product Liability is treated differently
- Hard caused by manufactured goods
- Canada Vs Usa:
 - Canada: manufactures only liable for careless defects in design
 - USA: strictly liable for any defects

Causation:

- Who caused the harm in question.
- “Would the plaintiff still have suffered harm; but for the defendant?”
- Would the plaintiff still have loss if the defendant was not in the picture.

But for test: (factual causation):

- Balance of probabilities:
 - Is it more likely than not that the careless event made a difference

Remoteness (legal causation):

- No liability if the loss is too remote
- The type of harm suffered was reasonably foreseeable
- Exceptions to remoteness:
 - Thin skull Principle:

- Unusual vulnerability to a loss
- If some harm is reasonably foreseeable then the plaintiff can recover from the entire injury
- If no harm is reasonably foreseeable plaintiff cannot recover for any part of the injury

Intervening Acts:

- Defendant is only liable if there is a foreseeable chain of events
- First action must relate to and cause the second

Defences For Negligence

Contributory Negligence:

- Plaintiff's careless contribution to their own loss
- Did the plaintiff breach the standard of care himself.
- Was the plaintiff's carefulness a cause of the plaintiff's loss
- Effects:
 - Court will Apportion liability

Voluntary Assumption of Risk:

- Plaintiff has accepted the risk of loss
- Test:
 - Plaintiffs must clearly accept physical and legal risks.
 - Defendants must draw the plaintiff's attention to the exclusion cause.
- Complete Defence

Illegality:

- Plaintiff is injured while engaged in illegal activity
- Complete defence

